

Ordinance No. 673-2020 AS AMENDED

By Council Members McCormack, Brancatelli and Kelley (by departmental request)

An emergency ordinance authorizing an amendment to Ordinance 1379-09, passed October 9, 2009, to extend the term of the Tax Increment Financing structure for the Flats East Bank Project for an additional thirty years pursuant to Ohio Revised Code 5709.51, to make related changes to the project agreement, and to declare an emergency.

WHEREAS, on October 9, 2009, City Council for the City passed Ordinance No. 1379-09 in accordance with Ohio Revised Code (“R.C.”) 5709.41 to declaring certain improvements to be undertaken by Flats East Bank Development, LLC, and related designated entities (collectively, “Flats East Bank” or “Redeveloper”) to be for to be a public purpose and exempting 100% of the increase in assessed value for such parcels resulting from the improvements for a period of up to 30 years (the "Original TIF Exemption"), first payable in collection year 2010 and extending through collection year 2040; and,

WHEREAS, pursuant to R.C. 5709.51, as adopted by the 133rd Ohio General Assembly and with an effective date of October 2019, the City has been afforded a limited opportunity to extend this urban redevelopment TIF for the proposed additional 30 years (“TIF law change”); and,

WHEREAS, in accordance with such TIF law change, the City and Flats East Bank are desirous of extending the term of the Original TIF Exemption by an additional thirty (30) years to capture additional tax increment financing revenue (the “Extended TIF Exemption”); and,

WHEREAS, the Extended TIF Exemption would allow the project to realize additional tax increment financing revenue from Flats East Bank to cover various financial obligations that the Redeveloper may have with the City associated with the Flats East Bank Project; and,

WHEREAS, the City and Flats East Bank also are desirous, during the term of the Extended TIF Exemption, to compensate the city school district in an amount equal in value to the amount of taxes that would be payable to the school district if the TIF had not been exempted from taxation during the proposed the additional 30-year period (“Extended TIF School District Compensation”); and,

WHEREAS, notwithstanding the extended term and the Extended TIF School District Compensation, all other terms and conditions of the Original TIF Exemption are to remain the same; and,

WHEREAS, the City acknowledges the TIF law change requires that service payments made pursuant to R.C. 5709.42 by Flats East Bank and other parcel owners exceeded one million five hundred thousand dollars (\$1,500,000.00) in calendar year 2019; and,

WHEREAS, this Ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That Ordinance No. 1379-09 duly passed by City Council on October 9, 2009 (the “Original TIF Ordinance”) to create an urban redevelopment TIF under authority of R.C. 5709.41 is hereby amended pursuant to R.C. 5709.51 for the purpose of extending the exemption from taxation of improvements to the parcels designated under said Ordinance for an additional period of not more than thirty (30) years according to the requirements set forth under Ohio law.

Section 2. That the City hereby determines the service payments made pursuant to R.C. 5709.42 by the owners of the parcels designated in the Original TIF Ordinance exceeded one million five hundred thousand dollars (\$1,500,000.00) in calendar year 2019.

~~**Section 3.** That pursuant to division (B)(1) of ORC 5709.911, the Director of Economic Development is hereby authorized, in his discretion, to consent to a subsequent exemption with respect to Parcel 101-12-307.~~

Section 3. Reserved.

Section 4. That the Director of Economic Development is hereby authorized to enter into an amendment to the Tax Increment Financing Agreement with Flats East Bank Development, LLC entered into under the Original TIF Exemption to extend the term of the TIF for an additional thirty (30) years. Said amendment shall also provide, among other things, that compensation to the city school district during the Extended TIF Exemption term will be equal in value to the amount of taxes that would be payable to the school district if the improvements had not been exempted hereunder (i.e., a so-called “non-school” TIF during the extended term years). All other terms and conditions of the Original TIF Exemption are to remain the same. An executive summary has been placed in File No. 673-2020-A.

Section 5. That the amendment to the Tax Increment Financing Agreement shall be prepared by the Director of Law.

Section 6. That the Director of Economic Development is authorized to amend the repayments of the existing Agreements between the City and Flats East Bank, subject to HUD approval, if deemed necessary.

Section 7. That the Director of Economic Development further is authorized to enter into any agreement, document, or instrument necessary to implement this Ordinance and to take any necessary actions in furtherance hereof.

Section 8. That this Ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

THERE IS NO LEGAL OBJECTION TO THIS LEGISLATION IF AMENDED AS FOLLOWS:

1. Strike Section 3 in its entirety and insert: "Section 3. Reserved."

Date: _____ (Signed): _____

Richard Bertovich
Chief Assistant Director of Law

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EXECUTIVE SUMMARY

Flats East Bank TIF Extension

Background

As part of the capital stack to fund Phase I of the Flats East Bank project (entered into December 2010), the Flats East development area was subject to a TIF. CMSD consented to the use of a portion of their projected tax revenues as part of the TIF. Per the compensation agreement, CMSD is to receive 30% of their portion of the taxes for Phase I and 100% of their portion of the taxes for Phase II (standard non-school). The compensation agreement also provided that CMSD would receive 100% of the taxes generated from any new school levy. The 2012 school levy and resultant tax increase has been a point of contention for the developer.

The TIF funded a waterfall of payments, in the following order of precedence:

1. Payment to CMSD of the school share
2. Payment on three (later four) bonds issued by the Cuyahoga Port, Summit Port, State of Ohio, and Cuyahoga County
3. City HUD 108 (Original Principal: \$30,000,000)
4. County HUD 108 (Original Principal: \$2,000,000)
5. Various other subordinate debt (CDA, City, County, State)

In addition, revenue from the parking garage was pledged to fund the waterfall, beginning with the payment of the City's HUD 108 and then flowing down from there.

When Phase II of the project was financed, an additional TIF bond was taken out and paid through the waterfall.

Revenue projections have been substantially short. Parking net revenues have come in almost \$1,500,000 below projections, due to diminished revenue and increased costs, as compared to the initial modeling.

TIF Extension

In HB 166 (2019 Budget Bill), the State of Ohio provided a pathway to extend TIFs for an additional 30 years. This ordinance would permit the extension of the TIF (currently expiring in 2040) for an additional 30 years. This would generate additional revenue that could be bonded against to bring in cash today.

The project is subject to an existing Compensation Agreement, which provides for a reduced payment on a portion of the Flats East Bank office tower. The extension would be a completely non-school TIF.

Restructure Proposal

The proposed restructure would take the following form:

Flats would issue new TIF Bonds against the remaining term and a portion of the additional terms of the bonds. Revenues from the refinancing would pay off three of the four existing bonds, as well as generate additional capital that would be used to pay off outstanding obligations.

The refinancing is expected to allow for a pre-payment of a portion of the City's HUD 108 balance. This will reduce the amount of principal due on the loan. In addition, the City will engage with HUD on a restructure of the project's HUD 108 loan to reduce the annual payment and create a balloon payment due at the end of the term in 2030. With the additional term of the TIF financing available, there will be opportunities for additional refinancing events that can generate revenue to support the balloon payment.

Economic Impact

The Flats East Bank project has reformed an area of the City that had fallen into disrepair and created an amenity live-work-play space along the Cuyahoga River. Over 1,800 people work at the project site and 241 apartments have been built.

This refinancing will help stabilize the project and position it for future development. Removing some of the debt burden will help better manage project revenues. With market rates still very low, the ability to refinance now and lock in rates will maximize the revenue from the refinancing. Further, there are several developable lots remaining on the site; simplifying the capital stack will help make those developments more viable.

FLATS EAST BANK

(draft as of 12-7-2020)

From Master Funding Sources Document

11/8/2010

<u>Source</u>	<u>Phase 1</u>	<u>Phase 2</u>	<u>Total</u>	<u>Notes</u>
PRIVATE				
First Mortgage Bonds	117,175,000	70,150,000	187,325,000	
Developer Equity	43,269,753	31,423,883	74,693,636	
Bank Loan	0		0	
Hotel Franchise Contribution	750,000		750,000	
PRIVATE SUBTOTAL	161,194,753	101,573,883	262,768,636	
LOCAL PUBLIC BOND FINANCING				
Cleveland Port Bond Funds	8,800,000	6,068,000	14,868,000	
Summit Port Bond Funds	4,700,000		4,700,000	
County IRB Bonds		17,000,000	17,000,000	
PUBLIC BONDS SUBTOTAL	13,500,000	23,068,000	36,568,000	
STATE OF OHIO				
State Enterprise Bond Fund	15,000,000		15,000,000	Loan
State Urban Redevelopment Loan 2	5,000,000		5,000,000	Loan
State Rapid Outreach Grant	1,000,000		1,000,000	Grant
State Urban Redevelopment Loan 1 *	3,203,353		3,203,353	Loan
State 629 Grant	1,000,000	1,000,000	2,000,000	Infrastructure Grant
State Clean Ohio Grant	3,000,000	3,000,000	6,000,000	Brownfield Remediation Grant
State Capital Budget Grant	1,725,670	3,500,000	5,225,670	Infrastructure Grant
State ODNR		500,000	500,000	Infrastructure Grant
STATE SUBTOTAL	29,929,023	8,000,000	37,929,023	
CITY - DEVELOPMENT				
City Core City Loans **	6,000,000		6,000,000	Negotiated Disc. Prepayment
City HUD 108 Loan	30,000,000		30,000,000	Loan
City VPI Loan - Phase I ***	1,250,000		1,250,000	Negotiated Disc. Prepayment
City VPI Loan - Phase II ****		1,080,000	1,080,000	Forgivable 2020 - meet job #s
CITY SUBTOTAL	37,250,000	1,080,000	38,330,000	
CITY - INFRASTRUCTURE				
CPP	3,000,000	1,126,811	4,126,811	Infrastructure Grant
City Annual Appropriation Bonds	11,000,000		11,000,000	Infrastructure Grant
City General GO Bonds	1,000,000		1,000,000	Infrastructure Grant
City Water Grant	740,000		740,000	Infrastructure Grant
CITY INFRASTRUCTURE SUBTOTAL	15,740,000	1,126,811	16,866,811	

COUNTY				
County EPA Loan	1,500,000		1,500,000	Loan
County HUD 108 Loan	2,000,000		2,000,000	Loan
HUB BEDI Grant	2,000,000		2,000,000	Grant
County Brownfield Loan	4,000,000		4,000,000	Partially Forgivable
County Casino Loan		1,500,000	1,500,000	Loan
COUNTY SUBTOTAL	9,500,000	1,500,000	11,000,000	
OTHER				
Investment Earnings; Sales Tax Savings	821,521	1,590,091	2,411,612	
NEORS	9,169,807	518,420	9,688,227	Infrastructure Grant
CLE Dev. Partnership Loan	5,051,000	1,500,000	6,551,000	
Federal DOT Grant	4,240,000	598,199	4,838,199	Infrastructure Grant
Federal Commerce Grant	708,000		708,000	Infrastructure Grant
OTHER SUBTOTAL	19,990,328	4,206,710	24,197,038	
Total	287,104,104	140,555,404	427,659,508	
Current Annual TIF Value (\$3,452,783)				
2011-2030			69,055,660	
Annual CRA Abatement (\$1,361,797)				
Expires 2030			27,235,940	
Future Annual TIF Value \$3,935,000				
(w/ Expired CRA) (2030-2041)			43,285,000	
Extended Annual TIF Value \$3,000,000				Ordinance 673-2020
(2041-2071)			90,000,000	

* Delinquent 55 monthly loan payments totaling \$417,339.67

** Delinquent balloon payment of \$1,001,283 as of 1/31/2017 per amended, restated and consolidated promissory note.

*** Delinquent balloon payment of \$1,250,000 as of 1/31/17 per amended, restated and consolidated promissory note.

Restructure proposal currently under review.

**** Total of six loans past maturity dates (12/31/17, 12/15/18 & 2/28/19)

but eligible for forgiveness with 25 jobs created by 2020

Flats East Bank New Community Authority 1.5% Sales Tax
2% Parking Tax
2% Bed Tax

Ordinance # xxx-2015